

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY LAWRENCE BECKTEL,

Defendant-Appellant.

UNPUBLISHED

December 15, 2011

No. 300284

Washtenaw Circuit Court

LC No. 08-000347-FC

Before: WILDER, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of assault with intent to murder, MCL 750.83. He was sentenced to 15 to 30 years' imprisonment. Because there was sufficient evidence to support defendant's conviction, the verdict was not against the great weight of the evidence, and the trial court did not err in refusing to give a jury instruction on self defense, we affirm.

On February 25, 2008, defendant and Stephen Kozmiuk, who knew each other through a mutual friend, ran into each other at a party store and then spent the evening together at defendant's apartment. The two were only casual acquaintances and had never had a disagreement. Both men drank a large amount of alcohol that evening and neither remembers the entire night, though they did talk and watch television at defendant's apartment while drinking. Later that night, defendant called 911 and reported he had stabbed someone "a lot." First responders located defendant in the alley behind his apartment and Kozmiuk in a puddle of blood on the ground near him. Defendant told responders he had killed Kozmiuk and that the knife he had used was in his apartment. Police removed the knife from defendant's apartment and arrested defendant. Kozmiuk survived.

On appeal, defendant first contends that there was insufficient evidence to support his conviction. We disagree.

In reviewing a claim of insufficient evidence, "a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992)(citations omitted). For a conviction of assault with intent to murder, the prosecution must show "(1) an assault, (2) with an actual intent to kill,

(3) which, if successful, would make the killing murder.” *People v Brown*, 267 Mich App 141, 147-148; 703 NW2d 230 (2005) (citations omitted).

“An actor’s intent may be inferred from all of the facts and circumstances, and because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient.” *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998) (internal citations omitted). To find intent to murder, the jury “may, and should take into consideration the nature of the defendant’s acts constituting the assault; the temper or disposition of mind with which they were apparently performed, whether the instrument and means used were naturally adapted to produce death, his conduct and declarations prior to, at the time, and after the assault, and all other circumstances calculated to throw light upon the intention with which the assault was made.” *People v Taylor*, 422 Mich 554, 568; 375 NW2d 1 (1985), quoting *Roberts v People*, 19 Mich 401, 415-416 (1870).

While defendant is correct that that there were no cuts to any of Kozmiuk’s vital organs and that he never told police or anyone else that he intended to kill Kozmiuk, the requisite intent can be inferred from the nature, extent, and location of the wounds Kozmiuk did suffer. See, *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010). Testimony at trial established that defendant admitted to the 911 operator several times that he stabbed Kozmiuk “a lot.” In fact, defendant stabbed Kozmiuk, by Kozmiuk’s count, 43 times, cutting him throughout his body, face and head. According to a responder one cut on Kozmiuk’s arm was so deep that muscle and bone were visible. Blood was found inside defendant’s apartment and Kozmiuk was found lying in a pool of blood outside the apartment, barely breathing. Defendant also stated to a police officer on the scene that he was not right in the head and that “I killed that motherfucker.” From the evidence, a reasonable jury could have determined beyond a reasonable doubt that defendant intended to kill Kozmiuk.

Defendant next argues that the verdict was against the great weight of the evidence. We disagree.

This issue is unpreserved and our review is thus limited to plain error affecting defendant’s substantial rights. *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). A verdict is against the great weight of the evidence when the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *Id.* at 218-219.

Defendant only briefly touches on this issue, merely indicating that Kozmiuk did not recall any of the events that occurred on the night of the incident after being offered a drink by defendant. Be that as it may, there is substantial evidence against defendant, as indicated above. Defendant has not shown the verdict constitutes plain error requiring reversal. *Id.*

Defendant’s final argument is that the trial court erred in denying his request to give a self-defense instruction. We disagree.

A claim of instructional error involving a question of law is reviewed de novo; however, the trial court’s determination that a jury instruction applies to the facts of the case is reviewed for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). This

Court “review[s] jury instructions in their entirety to determine if error requiring reversal occurred.” *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001). “To give a particular instruction to a jury, it is necessary that there be evidence to support the giving of that instruction.” *People v Johnson*, 171 Mich App 801, 804; 430 NW2d 828 (1988).

A claim of self-defense at common law required an honest and reasonable belief of an imminent danger of death or great bodily harm. *People v Dupree*, 486 Mich 693, 707; 788 NW2d 399 (2010). The self-defense act, MCL 780.971 *et seq.*, similarly requires an honest and reasonable belief of imminent death or harm.

The only evidence to support the self-defense jury instruction was that defendant had cuts on his hands and his hands were swollen. There was, however, no evidence that Kozmiuk threatened defendant, that Kozmiuk was armed, that he and defendant engaged in an altercation, or that defendant believed he faced imminent death or harm. Defendant testified specifically that he did not recall any of the events of the night after he and Kozmiuk were drinking and that there was no ill will between the two. A jury instruction must be supported by evidence. *Johnson*, 171 Mich App at 804. Because there was a lack of evidence of self-defense, the trial court properly denied defendant’s request for the jury instruction.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Michael J. Talbot
/s/ Deborah A. Servitto